IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Public Interest Litigation Petition No. 120 of 2006

1. Meenal Mohan Lokegaonkar)
Secretary, Janjagruti Seva)
Sangh (Regd.), Khotwadi,)
Beasant Road, Santacruz)
(West), Mumbai 400 054)

2. Avinash Jain, Secretary)
Mumbai Chhatra Yuva Parishad)
4, Arun Apartments, Tilak)
Road, Santacruz (West),)
Mumbai 400 054) ..Petitioners

vs.

1. The State of Maharashtra)
through the Secretary, Urban)
Development Department,)
Government of Maharashtra)
Mantralaya, Mumbai 400 032)

2. The Deputy Director of Town)
Planning BMC Headquarters)
C.S.T., Greater Bombay)
Mumbai 400 001)

3. The Commissioner,)
Brihan Mumbai Municipal)
Corporation, Mumbai 400 001)

4. The Assistant Municipal)
Commissioner, H/West Ward,)
Brihan Mumbai Municipal)
Corporation, Bandra (East))
Mumbai 400 050)

5. The Executive Engineer)
Building Proposal (W.S.))
H.& K/E, Ward, B.M.C.,)
Bandra (West), Mumbai 50)

6. The Director, Neelkanth)
Group, Fine House, 5th road)
Anandaji Lane, M.G.Road,)
Ghatkoper (East),Mumbai -77)

7. The Director, Navaketan Premises Private Ltd., 9/10 Bhaveshwar Complex, Kirol Road, Vidyavihar, Mumbai 400 086) ..Respondents

Mr.R.B.Sabban for petitioners
Mr.K.R.Belosey, Govt. Pleader for respondent no.1
Mr.K.K.Singhavi, Sr.Counsel with Ms.Shobha Ajitkumar for respondent nos.2 to 5
Mr.J.J.Bhat, Sr.Counasel with Mr.Fedrun D'Vitre with Ms.Anjali Chandurkar i/b M/s Purnanand and Co. for respondent no.7.

Judgment Reserved on: 27.6.2007
Judgment delivered on: 19.7.2007

CORAM: SWATANTER KUMAR, C.J.
AND S.C.DHARMADHIKARI J.
19th July, 2007

ORAL JUDGMENT:(Per S.C.Dharmadhikari J.)

1. Rule. Returnable forthwith by consent of parties. Respondents waive service.

2. By this petition under Article 226 of the Constitution of India, the petitioners who are residing at Santacruz, Mumbai and the office bearers of Janjagruti Seva Sangh, a public trust undertaking development work at Local Level are praying for the following reliefs:

> "a) This Hon'ble Court may be pleased to issue the Writ of Mandamus or any other appropriate writ,

order or direction directing the respondent authorities to demolish forthwith the illegal and unauthorised construction done on the land admeasuring 3446 sq.meters reserved for the Parking Lot and the land admeasuring 1723 sq.meters reserved for the Housing the dishoused, under the Reservation No.83, Site/Sheet No.238 situated at CTS No.118 to 126, Final Plot Nos.82, TPS-1, Santacruz (West), Mumbai;

b) this Hon'ble Court may be pleased to issue the writ of mandamus or any other appropriate writ, order or direction directing the respondent authorities to demolish forthwith the illegal and unauthorised commercial construction done on the land admeasuring 1723 sq.mtrs. reserved in the Residential Zone under the Reservation No.63, Site/Sheet No.238 situated at CTS No.118 to 126, Final Plot Nos.82, TPS-1, Santacruz (West), Mumbai;"

3. By relying upon the notification dated 21st May, 1992 published in Maharashtra Government Gazette sanctioning the Development Plan for Mumbai and more particularly of "H/West ward", it is contended that Reservation no.63, site/sheet no.238 indicated therein, comprising the area

of 7956 sq.meters and identified as CTS No.1181 to 1186, Final Plot No.82, TPS I, Santacruz (West), Mumbai is Notified by the State for Public Purpose specified therein. If the notification is perused in this behalf, then, according to the petitioners, it would be clear that the area of 1119 sq.meters from southern part of the reservation "Municipal Retail Market and Municipal Housing" is changed to "retail market" and is numbered as site No.238. The area of 3446 sq.meters along with P.M.Road is reserved for parking lot, the area of 1723 sq.meters towards West is reserved for Housing the dishoused with an access from P.M.Road and remaining 1723 sq.meters is deleted and included in residential zone as shown on the plan.

4. In other words, the proposed reservation of "Municipal Retail Market and Municipal Housing" stands modified and the Government sanction under sec.31(1) of the Maharashtra Regional and Town Planning Act, 1966 is accorded in the above terms. After the sanction, the extent of Reservations are as indicated above. The petitioners have pointed out the manner in which the reservation was proposed by the Municipal Corporation, which is the Planning Authority and finally sanctioned by the State Government.

5. Their grievance is that the builders/developers who are respondent nos. 6 and 7 to this petition have started construction on the Final Plot. The same is illegal and unauthorised in as much as the land reserved for parking lot and housing the dishoused has also been included in the development/construction. Once, this portion is also included in the construction activity, then, the construction is patently unauthorised and illegal and liable to be demolished.

6. The petitioners submit that by their Advocate's letter dated 17th February, 2006 they called upon respondent nos. 1 to 5 to take appropriate action including demolition of the unauthorised and illegal construction at site. It is their case that all the relevant details pertaining to the construction activities were furnished. There was a reminder addressed on 28th March, 2006 but the Corporation and the State have not taken any action. It is in these circumstances that the petitioners have approached this Court.

7. When this matter was placed before us on the earlier occasion, we had passed an order directing the Corporation to file an affidavit stating as to what area falls within the reservation of housing for dishoused and as to how this reservation is implemented at site. In other words,

we had called upon the Corporation to satisfy us as to how handing over of 3 flats by builders and developers to the Corporation would satisfy the Reservation for this section of the society.

8. The Corporation was also directed to clarify with regard to the persons who are entitled to allotment of tenement/flat under the category of "dishoused persons".

9. The above direction was issued by us after hearing Mr.Sabban for the petitioners, Mr.K.K.Singhavi, learned Sr.Counsel appearing for respondent Municipal Corporation and Mr.J.J.Bhat, learned Sr.Counsel appearing for the builders/developers.

10. From the affidavit which was filed before the above directions were issued, it is clear that the builders/developers have provided a parking lot in as much as a multistoreyed parking lot has already been made at site. The area reserved for parking lot is 3446 sq.meters. That parking lot was constructed and architect/licenced surveyor of respondent no.7 by letter dated 15th January, 2007 offered possession of this parking lot to the Corporation and further steps are accordingly being undertaken is not disputed. As far as the reservation for housing the dishoused is concerned,

the developers have stated on oath that they would at site, provide 1723 sq.meters of housing area which is equivalent to 3 flats and those will be handed over to the Corporation. In this behalf an affidavit which is filed on 14th February, 2007 on behalf of the Corporation states thus:

> "5(d) As regards reservation of housing for dishoused, the said reservation is buildable and normally as provided in Table 4 of D.C.R.9, in such reservation 10% of the area is being built up and handed over to the Corporation. Under the present scheme, the area of the said reservation is 1723 sq.meters. I submit that as per D.C.Regulations, 1991, minimum tenement density shall be 325 units per net hector and that not less than 50% shall carpet area of 180 sq.ft. each. As per prevailing policy of the Corporation, the carpet area of such tenements shall be 225 sq.ft. each. I, therefore, submit that out of the aforesaid area of reservation, set back area to the extent of the said reserved area and R.G.area to that effect is deducted. Thereafter, as per the tenement density, 50% tenements developed on the said plot is required to have area of 225 sq.ft. Accordingly, the proportionate tenements to be handed over are

worked out to 3o tenements of 225 sq.ft. each. I submit that the developer has already handed over 3 flats to M.C.G.M. on 17.2.2005.

6.(i) I state that on the said plot of land 2 buildings are approved by M.C.G.M. Building No.1 comprises of ground plus 1st to 5th and 6th (pt) upper floor for residential purpose. The said building is completed and Occupation Certificate is granted on 28.6.2005. In the said building, the 3 tenements as stated above are handed over to the Corporation.

(ii) Building no.2 was lastly approved for two level basement. Second level basement for parking lot to be handed over to M.C.G.M. free of cost and first level basement for shopping and related services. Above the said basement, said building includes ground to 2nd floor for shopping plus 3rd floor for restaurant and food stalls with entertainment area. 4th floor again is allotted for parking for the said building and 5th floor is the banquet halls. The said commercial user approved in respect of building no.2 is as per D.C.Regulations 52(6). I further submit that the necessary permission to the said building are

granted in accordance with D.C.Regulations and appropriate sanction of the Competent Authority. The said building no.2 is also granted part O.C. on 12.1.2007 for parking lot only to be handed over to the Corporation and the procedure is under process. After the said parking lot is handed to the Corporation free of cost as per the I.O.D. conditions, further O.C. shall be granted in accordance with compliance of the conditions."

11. However, the petitioners filed a rejoinder and disputed the contents of this affidavit. Their contention was that parking lot was a private facility whereas the parking facilities envisaged by the Reservation is a public parking. It was also contended that out of 560 units which can be accommodated in 1723 sq.meters of plot, 50% i.e. 228 units of minimum 225 sq.ft. alone would meet the reservation of housing for the dishoused.

12. It is only with regard to these two issues that the arguments were canvassed and that is how the direction of 5th April, 2007 was issued by us. Accordingly, further affidavits have been filed by the Corporation. The Corporation has clarified that its Estate Department took possession of 3 tenements for Project Affected Persons (PAPs for short) in the building on 17th February, 2005.

The physical demarcation of the flats is also set out in the affidavit of the Asstt.Commissioner. Allotment of 3 tenements to PAPs has been made and details of the same are also set out. The names of the allottees are mentioned in this affidavit.

13. In the affidavit of the Chief Engineer (D.P.), it is pointed out that the reservation of the Housing for the Dishoused (H.D.) is dealt with by D.C.Regulations and more particularly D.C.Regulation No.9 which has been reproduced. Thereafter our attention is invited to the Circulars/Orders of the Government of Maharashtra on the subject and it is contended that in full compliance with these circulars and notifications, the computation of tenements reserved for dishoused has been made. The calculations are set out in para 8 of the affidavit and thus it is demonstrated that 3 tenements of 20.90 sq.meters satisfy the requirement. The relevant circulars have also been annexed to this affidavit. This affidavit has been filed on 14th June, 2007. Mr.Sabban appearing for the petitioners took time to go through the Circulars and file rejoinder to these Affidavits.

14. Despite taking time, Mr.Sabban could not produce anything to dispute the contents of the aforesaid affidavits. However, he raised another contention for our

consideration, namely, that, the land/plot being reserved for the aforesaid purposes, no development at all could have been permitted thereon. In his submission, D.C.Regulations are of 1991 whereas notification and sanction is of the year 1992. In such circumstances, D.C.Regulations would have no applicability to the case at hand.

15. It is not possible to accept this contention. The same overlooks the Maharashtra Regional and Town Planning Act, 1966 so also the Development Control Regulations. Section 22 of the M.R.and T.P.Act, 1966 sets out the contents of a Development Plan. Sub-clause (n) therein reads thus:

16. From perusal of the same, it is abundantly clear that D.C.Regulations are traceable to the Development Plan itself. That is the undisputed position. Therefore, once the broad outline is provided in the Development Plan, then individual development activity is regulated and controlled by the regulations which are framed in pursuance of the powers conferred by section 22(m) and other related provisions. Therefore, leave alone any conflict between the two, there is a perfect harmony in as much as the Development Plan, Designations, proposals and Reservations are always considered and taken into account

while sanctioning and granting individual development permission. Once this is an admitted legal position and Development Control Regulations squarely permitting Development in cases of the present nature after making provision for implementation for reservations, then, in our view, there is no substance in the contention of Mr.Sabban.

17. From a perusal of the material placed on record, we are satisfied that both parking as also the housing for dishoused reservations are provided at site. The public purpose is thus achieved. The parking lot is handed over to the Corporation for public use. Thus, there is no basis for the apprehensi on that it will be used only by the occupants of the building. The development and construction on the subject plot is neither illegal nor unauthorised as alleged. The Developers and builders have in consonance with the reservation made arrangement and provided for parking facilities so also the tenements for housing the dishoused. It is undisputed that they are provided at the same site/plot. Once the reservations are taken care of and in any event they being on a part of the property earmarked for the same then, it is not possible to accede to the submission that the construction activity itself was impermissible. It is well settled that by reservation and designation on a private property the

ownership and title thereof does not vest in the local body/planning authority. (See AIR 1995 S.C.430 Pt.Chet Ram Vashist (dead) by L,.Rs. Vs. Municipal Corporation of Delhi). The developer can build upon and develop the property bearing in mind the proposal and reservation and individual plan for development can be sanctioned accordingly. In the present case, while building a multistoreyed structure on the plot, the developer has provided for both reservations. There is no material controverting the factual aspect of compliance with the relevant provisions of law.

18. In these circumstances, we find no substance in the petition. As far as the complaint of the petitioner that a temple at site has been demolished and removed we find no material on record which would indicate that the owner had transferred the property to respondent nos. 6 and 7 with clear intent of a Jain temple being provided at site. In this behalf para 14 of the affidavit of the developer is eloquent enough. That apart, neither is any material provided nor the petitioner at any time made any serious grievance about the temple not being provided for. The grievances projected were restricted regard to the above mentioned reservations.

19. These reservations have been provided at site and fully implemented in accordance with the rules and regulations. The petition must, therefore, fail. Rule is, therefore, discharged with no order as to costs.

(CHIEF JUSTICE)

(S.C.DHARMADHIKARI J.)